

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-6445

JUMA A. WHITFIELD,

Petitioner - Appellant,

versus

J. GARMAN, Warden,

Respondent - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Richmond. James R. Spencer, District Judge. (CA-02-612-3)

Submitted: May 15, 2003

Decided: May 28, 2003

Before LUTTIG and KING, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Dismissed by unpublished per curiam opinion.

Juma A. Whitfield, Appellant Pro Se. Richard Bain Smith, Assistant Attorney General, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Juma A. Whitfield seeks to appeal the district court's order denying his 28 U.S.C. § 2254 (2000) petition as untimely filed. We dismiss the appeal for lack of jurisdiction because the notice of appeal was not timely filed.

Parties are accorded thirty days after the entry of the district court's final judgment or order to note an appeal, Fed. R. App. P. 4(a)(1)(A), unless the district court extends the appeal period under Fed. R. App. P. 4(a)(5) or reopens the appeal period under Fed. R. App. P. 4(a)(6). This appeal period is "mandatory and jurisdictional." Browder v. Director, Dep't of Corr., 434 U.S. 257, 264 (1978) (quoting United States v. Robinson, 361 U.S. 220, 229 (1960)).

The district court's order was entered on the docket on February 3, 2003. Giving Whitfield the benefit of Houston v. Lack, 487 U.S. 266 (1988), his notice of appeal was filed on March 12, 2003. Because Whitfield failed to file a timely notice of appeal or to obtain an extension or reopening of the appeal period, we deny a certificate of appealability and dismiss the appeal.*

We deny Whitfield's motion to proceed in forma pauperis and dispense with oral argument because the facts and legal contentions

* Because the appeal is late, we lack jurisdiction to determine whether Whitfield has established grounds for a certificate of appealability under 28 U.S.C. § 2253(c)(1) (2000).

are adequately presented in the materials before the court and argument would not aid the decisional process.

DISMISSED